

108TH CONGRESS
1ST SESSION

S. 1187

To amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to require that ready-to-eat meat or poultry products that are not produced under a scientifically validated program to address *Listeria monocytogenes* be required to bear a label advising pregnant women and other at-risk consumers of the recommendations of the Department of Agriculture and Food and Drug Administration regarding consumption of ready-to-eat products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2003

Mrs. CLINTON introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to require that ready-to-eat meat or poultry products that are not produced under a scientifically validated program to address *Listeria monocytogenes* be required to bear a label advising pregnant women and other at-risk consumers of the recommendations of the Department of Agriculture and Food and Drug Administration regarding consumption of ready-to-eat products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “At-Risk Consumer
3 Protection Through Food Safety Labeling Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) consumption of food contaminated with mi-
7 crobial pathogens such as bacteria, parasites, vi-
8 ruses, and their toxins causes an estimated
9 76,000,000 illnesses, 325,000 hospitalizations, and
10 5,000 deaths each year in the United States;

11 (2) Government economists estimate that ill-
12 nesses from *Campylobacter*, *Salmonella*, *E. coli*
13 O157:H7, *E. coli* non-O157:H7 STEC, *Listeria*, and
14 *Toxoplasma gondii* cause \$6,900,000,000 in medical
15 costs, lost productivity, and premature death in the
16 United States each year;

17 (3) in particular, *Listeria monocytogenes* is the
18 cause of 2,500 illnesses and 500 deaths annually,
19 with economic costs of \$2,300,000,000;

20 (4) people that face relatively higher risks from
21 foodborne illness and associated complications in-
22 clude the very young, the very old, pregnant women,
23 and the immunocompromised, such as persons with
24 AIDS and cancer;

25 (5) outbreaks of foodborne illness are becoming
26 increasingly widespread in both geographic area and

1 duration, making detection and containment dif-
2 ficult;

3 (6) in 1998, following a major listeriosis out-
4 break from deli meats, many ready-to-eat meat and
5 poultry processors established *Listeria* testing pro-
6 grams, but others have no *Listeria* testing and con-
7 trol program at all, giving them an unfair advantage
8 in production costs over firms that are taking steps
9 to protect public health;

10 (7)(A) in 1989, the Secretary of Agriculture es-
11 tablished a performance standard allowing zero tol-
12 erance for *Listeria monocytogenes* that prohibits de-
13 tectable levels of the pathogen in ready-to-eat meat
14 and poultry products; and

15 (B) a performance standard for *Listeria*
16 *monocytogenes* of nondetectable levels in ready-to-
17 eat meat products—

18 (i) is appropriate to protect at-risk con-
19 sumers (including pregnant women) (referred to
20 in this section as “at-risk consumers”) from se-
21 vere health consequences or death from expo-
22 sure to *Listeria monocytogenes*; and

23 (ii) is necessary to provide an adequate
24 safety margin for at-risk consumers;

1 (8) in February 2001, the Secretary of Agri-
2 culture proposed regulations establishing perform-
3 ance standards for the production of processed meat
4 and poultry products, including requirements for
5 controlling *Listeria monocytogenes*, but, in the time
6 since the public comment period closed in September
7 2001, little progress has been made in finalizing the
8 regulation;

9 (9) in 2002, an outbreak of foodborne listeriosis
10 linked to ready-to-eat turkey deli meat in Pennsyl-
11 vania, New York, New Jersey, Delaware, Maryland,
12 Connecticut, and Michigan—

13 (A) sickened 53 persons;

14 (B) killed 8 persons; and

15 (C) caused at least 3 pregnant women to
16 suffer miscarriages or stillbirths;

17 (10) in a March 21, 2003, speech to the North
18 American Meat Processors, Food Safety and Inspec-
19 tion Service Administrator Dr. Gary McKee said the
20 agency's December 2002 directive outlining *Listeria*
21 testing procedures for agency inspectors is only an
22 interim measure;

23 (11) to ensure the safety of at-risk consumers,
24 ready-to-eat meat and poultry products not produced
25 under a scientifically validated program to address

1 *Listeria monocytogenes* should be required to bear a
 2 label advising at-risk consumers of the Government’s
 3 recommendations not to consume ready-to-eat meat
 4 and poultry products without heating the products
 5 until steaming hot; and

6 (12) all data generated through scientifically
 7 validated programs to address *Listeria*
 8 *monocytogenes* should be shared with the Depart-
 9 ment of Agriculture and used to improve scientific
 10 research regarding the safety of ready-to-eat foods.

11 **SEC. 3. READY-TO-EAT MEAT PRODUCTS.**

12 (a) IN GENERAL.—Section 7 of the Federal Meat In-
 13 spection Act (21 U.S.C. 607) is amended by adding at
 14 the end the following:

15 “(g) READY-TO-EAT MEAT PRODUCTS.—

16 “(1) DEFINITIONS.—In this subsection:

17 “(A) AT-RISK CONSUMER.—The term ‘at-
 18 risk consumer’ includes a pregnant woman.

19 “(B) READY-TO-EAT MEAT PRODUCT.—

20 The term ‘ready-to-eat meat product’ means a
 21 meat product that has been processed so that
 22 the meat product may be safely consumed with-
 23 out further preparation by the consumer, that
 24 is, without cooking or application of some other
 25 lethality treatment to destroy pathogens.

1 “(2) LABELING REQUIREMENT.—Except as
2 provided in paragraph (3) or (4), a ready-to-eat
3 meat product shall bear a label advising consumers
4 that an at-risk consumer—

5 “(A) should not consume the ready-to-eat
6 meat product unless the ready-to-eat meat
7 product is heated until steaming hot; or

8 “(B) should follow such other instructions
9 as the Secretary may prescribe in accordance
10 with health guidelines and recommendations
11 published by the Secretary and the Secretary of
12 Health and Human Services.

13 “(3) EXEMPTIONS FOR PRODUCERS.—On the
14 motion of the Secretary or on petition of a producer
15 of a ready-to-eat meat product, the Secretary, after
16 notice and opportunity for a public hearing, shall, by
17 regulation applicable to all producers of the ready-
18 to-eat meat product or by order applicable to a par-
19 ticular producer of the ready-to-eat meat product,
20 provide an exemption from the requirement of para-
21 graph (2) if—

22 “(A) in the case of a ready-to-eat meat
23 product that the Secretary determines presents
24 a low risk to at-risk consumers, the producer—

1 “(i) has a scientifically validated pro-
2 gram (as determined by the Secretary) to
3 control *Listeria monocytogenes*; and

4 “(ii) makes all *Listeria* control pro-
5 gram records (including the results of any
6 testing of plant environment, food-contact
7 surfaces, or meat product) available for in-
8 spection by the Secretary; or

9 “(B) in the case of any ready-to-eat meat
10 product that the Secretary determines presents
11 a greater risk to at-risk consumers, the pro-
12 ducer of the ready-to-eat meat product has a
13 scientifically valid program to address *Listeria*
14 *monocytogenes* under which the producer—

15 “(i) tests food-contact surfaces for
16 *Listeria monocytogenes*—

17 “(I) at least once every 2 days of
18 production; and

19 “(II) if a food-contact surface
20 tests positive—

21 “(aa) at least 3 times per
22 day until the surface tests nega-
23 tive on 3 consecutive days; or

1 “(bb) in accordance with
2 such other regimen as the Sec-
3 retary may specify;

4 “(ii) tests the plant environment in
5 the ready-to-eat meat processing area for
6 the *Listeria* species—

7 “(I) at least once every 2 days of
8 production; and

9 “(II) if any part of the plant en-
10 vironment in the ready-to-eat meat
11 processing area tests positive—

12 “(aa) at least 3 times per
13 day until the plant environment
14 tests negative on 3 consecutive
15 days; or

16 “(bb) in accordance with
17 such other regimen as the Sec-
18 retary may specify;

19 “(iii)(I) tests final products for *Lis-*
20 *teria monocytogenes* at least 5 times per
21 month to measure the effectiveness of the
22 *Listeria* control program; and

23 “(II) if any food-contact surface tests
24 positive, conducts daily testing of the meat

1 product from the line found to be positive
2 until the surface tests negative for 3 days;

3 “(iv) makes all control program
4 records (including the results of any test-
5 ing of plant environment, food-contact sur-
6 faces, or meat product) available for in-
7 spection by the Secretary; and

8 “(v) meets any other requirement that
9 the Secretary may specify.

10 “(4) EXEMPTIONS FOR DISTRIBUTORS.—On the
11 motion of the Secretary or on petition of a dis-
12 tributor of a ready-to-eat meat product, the Sec-
13 retary, after notice and opportunity for a public
14 hearing, shall, by regulation applicable to all dis-
15 tributors of the ready-to-eat meat product or by
16 order applicable to a particular distributor of the
17 ready-to-eat meat product, provide an exemption
18 from the requirement of paragraph (2) if—

19 “(A) the distributor has purchasing speci-
20 fications incorporating the requirements of
21 paragraph (3); and

22 “(B) the Secretary determines that the
23 suppliers of the distributor are in compliance
24 with paragraph (3).

1 “(5) REPORTS BY THE SECRETARY.—Not later
2 than 3 years after the date of enactment of this sec-
3 tion, and at least triennially thereafter, the Sec-
4 retary shall compile and disseminate information
5 from records made available under paragraphs
6 (3)(A)(ii), (3)(B)(iv), and (4) to Federal agencies,
7 universities, and other research institutions and
8 other entities, as appropriate (excluding any such
9 proprietary or confidential information as is pro-
10 tected from disclosure), for the purpose of furthering
11 scientific research.

12 “(6) PERFORMANCE STANDARD.—A perform-
13 ance standard of the Secretary that provides zero
14 tolerance for detectable levels of *Listeria*
15 monocytogenes in ready-to-eat meats—

16 “(A) shall not be modified to permit any
17 detectable level of *Listeria* monocytogenes in
18 any ready-to-eat meat product; and

19 “(B) shall be based on scientifically vali-
20 dated testing methods for the detection of *Lis-*
21 teria monocytogenes, as determined by the Sec-
22 retary.”.

23 (b) MISBRANDING.—Section 1(n) of the Federal
24 Meat Inspection Act (21 U.S.C. 601(n)) is amended—

1 (1) in paragraph (11), by striking “or” at the
2 end;

3 (2) in paragraph (12), by striking the period at
4 the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(13) if it is a ready-to-eat meat product that
7 is required to bear a label under section 7(g), and
8 it does not bear such a label.”.

9 **SEC. 4. READY-TO-EAT POULTRY PRODUCTS.**

10 (a) IN GENERAL.—Section 8 of the Poultry Products
11 Inspection Act (21 U.S.C. 457) is amended by adding at
12 the end the following:

13 “(e) READY-TO-EAT POULTRY PRODUCTS.—

14 “(1) DEFINITIONS.—In this subsection:

15 “(A) AT-RISK CONSUMER.—The term ‘at-
16 risk consumer’ includes a pregnant woman.

17 “(B) READY-TO-EAT POULTRY PROD-
18 UCT.—The term ‘ready-to-eat poultry product’
19 means a poultry product that has been proc-
20 essed so that the poultry product may be safely
21 consumed without further preparation by the
22 consumer, that is, without cooking or applica-
23 tion of some other lethality treatment to destroy
24 pathogens.

1 “(2) LABELING REQUIREMENT.—Except as
2 provided in paragraph (3) or (4), a ready-to-eat
3 poultry product shall bear a label advising con-
4 sumers that an at-risk consumer—

5 “(A) should not consume the ready-to-eat
6 poultry product unless the ready-to-eat poultry
7 product is heated until steaming hot; or

8 “(B) should follow such other instructions
9 as the Secretary may prescribe in accordance
10 with health guidelines and recommendations
11 published by the Secretary and the Secretary of
12 Health and Human Services.

13 “(3) EXEMPTIONS FOR PRODUCERS.—On the
14 motion of the Secretary or on petition of a producer
15 of a ready-to-eat poultry product, the Secretary,
16 after notice and opportunity for a public hearing,
17 shall, by regulation applicable to all producers of the
18 ready-to-eat poultry product or by order applicable
19 to a particular producer of the ready-to-eat poultry
20 product, provide an exemption from the requirement
21 of paragraph (2) if—

22 “(A) in the case of a ready-to-eat poultry
23 product that the Secretary determines presents
24 a low risk to at-risk consumers, the producer—

1 “(i) has a scientifically validated pro-
2 gram (as determined by the Secretary) to
3 control *Listeria monocytogenes*; and

4 “(ii) makes all *Listeria* control pro-
5 gram records (including the results of any
6 testing of plant environment, food-contact
7 surfaces, or poultry product) available for
8 inspection by the Secretary; or

9 “(B) in the case of any ready-to-eat poul-
10 try product that the Secretary determines pre-
11 sents a greater risk to at-risk consumers, the
12 producer of the ready-to-eat poultry product
13 has a scientifically valid program to address
14 *Listeria monocytogenes* under which the pro-
15 ducer—

16 “(i) tests food-contact surfaces for
17 *Listeria monocytogenes*—

18 “(I) at least once every 2 days of
19 production; and

20 “(II) if a food-contact surface
21 tests positive—

22 “(aa) at least 3 times per
23 day until the surface tests nega-
24 tive on 3 consecutive days; or

1 “(bb) in accordance with
2 such other regimen as the Sec-
3 retary may specify;

4 “(ii) tests the plant environment in
5 the ready-to-eat poultry processing area for
6 the *Listeria* species—

7 “(I) at least once every 2 days of
8 production; and

9 “(II) if any part of the plant en-
10 vironment in the ready-to-eat poultry
11 processing area tests positive—

12 “(aa) at least 3 times per
13 day until the plant environment
14 tests negative on 3 consecutive
15 days; or

16 “(bb) in accordance with
17 such other regimen as the Sec-
18 retary may specify;

19 “(iii)(I) tests final products for *Lis-*
20 *teria monocytogenes* at least 5 times per
21 month to measure the effectiveness of the
22 *Listeria* control program; and

23 “(II) if any food-contact surface tests
24 positive, conducts daily testing of the poul-
25 try product from the line found to be posi-

1 tive until the surface tests negative for 3
2 days;

3 “(iv) makes all control program
4 records (including the results of any test-
5 ing of plant environment, food-contact sur-
6 faces, or poultry product) available for in-
7 spection by the Secretary; and

8 “(v) meets any other requirement that
9 the Secretary may specify.

10 “(4) EXEMPTIONS FOR DISTRIBUTORS.—On the
11 motion of the Secretary or on petition of a dis-
12 tributor of a ready-to-eat poultry product, the Sec-
13 retary, after notice and opportunity for a public
14 hearing, shall, by regulation applicable to all dis-
15 tributors of the ready-to-eat poultry product or by
16 order applicable to a particular distributor of the
17 ready-to-eat poultry product, provide an exemption
18 from the requirement of paragraph (2) if—

19 “(A) the distributor has purchasing speci-
20 fications incorporating the requirements of
21 paragraph (3); and

22 “(B) the Secretary determines that the
23 suppliers of the distributor are in compliance
24 with paragraph (3).

1 “(5) REPORTS BY THE SECRETARY.—Not later
 2 than 3 years after the date of enactment of this sec-
 3 tion, and at least triennially thereafter, the Sec-
 4 retary shall compile and disseminate information
 5 from records made available under paragraphs
 6 (3)(A)(ii), (3)(B)(iv), and (4) to Federal agencies,
 7 universities, and other research institutions and
 8 other entities, as appropriate (excluding any such
 9 proprietary or confidential information as is pro-
 10 tected from disclosure), for the purpose of furthering
 11 scientific research.

12 “(6) PERFORMANCE STANDARD.—A perform-
 13 ance standard of the Secretary that provides zero
 14 tolerance for detectable levels of *Listeria*
 15 monocytogenes in ready-to-eat poultry products—

16 “(A) shall not be modified to permit any
 17 detectable level of *Listeria* monocytogenes in
 18 any ready-to-eat poultry product; and

19 “(B) shall be based on scientifically vali-
 20 dated testing methods for the detection of *Lis-*
 21 teria monocytogenes, as determined by the Sec-
 22 retary.”.

23 (b) MISBRANDING.—Section 4(h) of the Poultry
 24 Products Inspection Act (21 U.S.C. 453(h)) is amended—

1 (1) in paragraph (11), by striking “or” at the
2 end;

3 (2) in paragraph (12), by striking the period at
4 the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(13) if it is a ready-to-eat poultry product that
7 is required to bear a label under section 8(e), and
8 it does not bear such a label.”.

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